

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

SENATE BILL 792

46TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2003

INTRODUCED BY

Bernadette M. Sanchez

AN ACT

RELATING TO MUNICIPALITIES; AUTHORIZING CERTAIN MUNICIPALITIES  
TO IMPOSE A HOSPITALITY FEE ON TOURIST ACCOMMODATIONS FOR  
CONVENTION CENTER IMPROVEMENTS AND TOURISM MARKETING AND  
PROMOTION.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. SHORT TITLE. -- This act may be cited as the  
"Hospitality Fee Act".

Section 2. DEFINITIONS. -- As used in the Hospitality Fee  
Act:

A. "gross rent" means the total amount of rent paid  
for tourist accommodations, not including the state and local  
option gross receipts taxes paid on the rent receipts;

B. "municipality" means a municipality located in a  
class A county with a population greater than two hundred fifty

underscored material = new  
[bracketed material] = delete

1 thousand according to the most recent federal decennial census;

2 C. "person" means a corporation, firm, other body  
3 corporate, partnership, association or individual, including an  
4 executor, administrator, trustee, receiver or other  
5 representative appointed according to law and acting in a  
6 representative capacity. "Person" does not include the United  
7 States of America; the state of New Mexico; any corporation,  
8 department, instrumentality or agency of the federal government  
9 or the state government; or any political subdivision of the  
10 state;

11 D. "proprietor" means a person who furnishes  
12 tourist accommodations to a renter;

13 E. "rent" means the consideration received by a  
14 proprietor in money, credits, property or other consideration  
15 valued in money from renters for tourist accommodations, other  
16 than:

17 (1) consideration received from a renter who  
18 has been a permanent resident of the tourist accommodation for  
19 a period of at least thirty consecutive days or a renter who  
20 enters into or has entered into a written agreement for rental  
21 of the tourist accommodation for a period of at least thirty  
22 consecutive days; or

23 (2) consideration received from a renter for a  
24 room or other unit of accommodation for which the renter has  
25 paid less than two dollars (\$2.00) per day;

. 142365. 1

underscored material = new  
[bracketed material] = del ete

1 F. "renter" means a person to whom tourist  
2 accommodations are furnished;

3 G. "room" means a room or other unit of  
4 accommodation furnished by a proprietor to a renter in a  
5 tourist accommodation; and

6 H. "tourist accommodation" means a hotel,  
7 apartment, apartment hotel, apartment house, lodge,  
8 lodginghouse, rooming house, motor hotel, guest house, guest  
9 ranch, ranch resort, guest resort, mobile home, motor court,  
10 auto court, auto camp, trailer court, trailer camp, trailer  
11 park, tourist camp, cabin or other premises used for  
12 accommodation. "Tourist accommodation" does not include:

13 (1) accommodations at religious, charitable,  
14 educational or philanthropic institutions, including summer  
15 camps operated by such institutions;

16 (2) clinics, hospitals or other medical  
17 facilities;

18 (3) privately owned and operated convalescent  
19 homes or homes for the aged, infirm, indigent or chronically  
20 ill; or

21 (4) accommodations that do not have at least  
22 three rooms or other units of accommodation.

23 Section 3. HOSPITALITY FEE AUTHORIZED--RATE--PURPOSE.--

24 A. A municipality may impose by ordinance a  
25 hospitality fee on the gross rent received by proprietors of

. 142365. 1

underscored material = new  
[bracketed material] = delete

1 tourist accommodations within the municipality in an amount not  
2 to exceed one percent of the gross rent. The fee imposed by  
3 this subsection may be referred to as the "hospitality fee".

4 B. Proceeds from the hospitality fee shall be used  
5 as follows:

6 (1) fifty percent of the proceeds shall be  
7 used to equip and furnish a municipal convention center; and

8 (2) fifty percent of the proceeds shall be  
9 used by the municipality to contract with nonprofit  
10 organizations to purchase advertising that publicizes and  
11 promotes tourist-related attractions, facilities and events in  
12 the municipality and the county and tourist facilities or  
13 attractions within the area.

14 Section 4. COLLECTION OF HOSPITALITY FEE--AUDIT.--

15 A. Every proprietor of a tourist accommodation in a  
16 municipality imposing a hospitality fee shall collect the  
17 hospitality fee on behalf of the municipality and shall act as  
18 a trustee of the fee revenues. The fee shall be collected from  
19 proprietors in accordance with the ordinance imposing the fee  
20 and shall be charged separately from the rent fixed by the  
21 proprietor for the tourist accommodations.

22 B. The governing body of a municipality imposing a  
23 hospitality fee shall select for annual random audits one or  
24 more proprietors or tourist accommodations subject to the fee  
25 to verify the amount of gross rent subject to the fee and to

. 142365. 1

underscored material = new  
[bracketed material] = delete

1 ensure that the full amount of the fee on that rent is  
2 collected. Copies of audits completed shall be filed annually  
3 with the local government division of the department of finance  
4 and administration.

5 Section 5. FINANCIAL REPORTING. --The governing body of a  
6 municipality imposing a hospitality fee shall:

7 A. furnish to any municipal advisory board dealing  
8 with occupancy, lodging or accommodation taxes or fees  
9 information on that portion of a proposed budget report or  
10 audit filed or received by the governing body pursuant to  
11 either Chapter 6, Article 6 NMSA 1978 or the Audit Act that  
12 relates to the expenditure of hospitality fee proceeds within  
13 ten days of the filing or receipt of that proposed budget,  
14 report or audit; and

15 B. report quarterly to the local government  
16 division of the department of finance and administration on  
17 the expenditure of hospitality fee proceeds pursuant to  
18 Sections 3-38-15 and 3-38-21 NMSA 1978.

19 Section 6. ORDINANCE REQUIREMENTS. --The ordinance  
20 imposing a hospitality fee and, as applicable, any ordinance  
21 amending the fee, shall:

22 A. set out the procedures for licensing a  
23 proprietor and for suspending or revoking a license or refusing  
24 to license a proprietor after the governing body of the  
25 municipality has given the proprietor an opportunity for a

. 142365. 1

underscored material = new  
[bracketed material] = delete

1 public hearing on the suspension, revocation or refusal;

2 B. state the rate of the hospitality fee; the time,  
3 place and method for the payment of the fee to the  
4 municipality; the accounts and other records to be maintained  
5 in connection with the fee; a procedure for making refunds and  
6 resolving disputes relating to the fee; the procedure for  
7 preservation and destruction of records pertaining to the fee  
8 and their inspection and investigation; audit requirements;  
9 applicable civil and criminal penalties; and a procedure for  
10 liens, distraint and sales to satisfy such liens; and

11 C. clearly state any other rights, privileges,  
12 powers, immunities and other details relating to proprietor  
13 licensure, the collection of the hospitality fee and the  
14 remittance of the fee proceeds to the municipality.

15 Section 7. COLLECTION OF DELINQUENCIES--CIVIL PENALTY.--

16 A. A proprietor is liable for the payment of any  
17 amount of the hospitality fee proceeds the proprietor has  
18 failed to remit to the municipality.

19 B. A municipality shall provide by ordinance for a  
20 civil penalty for failure to remit the hospitality fee due in  
21 an amount equal to the greater of ten percent of the amount of  
22 the hospitality fee that was not remitted to the municipality  
23 or one hundred dollars (\$100).

24 C. The municipality may bring an action in law or  
25 equity in the district court for the collection of any amount

. 142365. 1

underscored material = new  
[bracketed material] = delete

1 of hospitality fee due, including without limitation penalties  
2 on that amount, interest on the unpaid principal amount at a  
3 rate of not exceeding one percent a month, the costs of  
4 collection and reasonable attorney fees incurred in connection  
5 with such an action.

6 Section 8. LIEN FOR HOSPITALITY FEE--PAYMENT--CERTIFICATE  
7 OF LIENS.--

8 A. The hospitality fee imposed by a municipality  
9 constitutes a lien in favor of that municipality upon the  
10 personal and real property of the proprietor providing tourist  
11 accommodations in that municipality. The lien may be enforced  
12 as provided in Sections 3-36-1 through 3-36-7 NMSA 1978.  
13 Priority of the lien shall be determined from the date of  
14 filing.

15 B. Under process or order of court, no person shall  
16 sell the property of any proprietor of a tourist accommodation  
17 without first ascertaining from the clerk or treasurer of the  
18 municipality in which the tourist accommodation is located the  
19 amount of any hospitality fee due the municipality. The  
20 hospitality fee due the municipality shall be paid from the  
21 proceeds of the sale before payment is made to the judgment  
22 creditor or to any other person with a claim on the sale  
23 proceeds.

24 C. The clerk or treasurer of the municipality shall  
25 furnish upon request to any person a certificate showing the

underscored material = new  
[bracketed material] = delete

1 amount of all liens in the records of the municipality against  
2 a proprietor of a tourist accommodation pursuant to the  
3 Hospitality Fee Act.

4 Section 9. ENFORCEMENT. --

5 A. An action to enforce the Hospitality Fee Act  
6 may be brought by:

7 (1) the attorney general or the district  
8 attorney in the county of jurisdiction; or

9 (2) a proprietor of a tourist accommodation  
10 who is collecting the proceeds of a hospitality fee in the  
11 county of jurisdiction.

12 B. A district court may issue a writ of mandamus or  
13 order an injunction or other appropriate remedy to enforce the  
14 provisions of the Hospitality Fee Act.

15 C. The court shall award costs and reasonable  
16 attorney fees to the prevailing party in a court action to  
17 enforce the provisions of the Hospitality Fee Act.

18 Section 10. PENALTIES--CRIMINAL. --

19 A. It is a violation of the municipal ordinance  
20 imposing a hospitality fee and providing for collection and  
21 administration of the fee pursuant to the Hospitality Fee Act  
22 for any proprietor subject to the fee to fail to pay the  
23 hospitality fee, to fail to remit the proceeds of the fee to  
24 the municipality or to fail to account properly for a tourist  
25 accommodation and the proceeds of the fee pertaining to the

. 142365. 1

underscored material = new  
[bracketed material] = delete

1 accommodation.

2 B. The governing body of the municipality shall  
3 provide by ordinance that a violation of an ordinance imposing  
4 and providing for collection and enforcement of the hospitality  
5 fee pursuant to the Hospitality Fee Act is a misdemeanor  
6 subject to a fine of not more than five hundred dollars (\$500)  
7 or imprisonment for not more than ninety days, or both.

8 Section 11. REVENUE BONDS. --

9 A. Revenue bonds may be issued at any time by a  
10 municipality to defray wholly or in part the costs of  
11 equipping or furnishing a municipal convention center.

12 B. The revenue bonds may be payable from and  
13 payment may be secured by a pledge of and lien on the revenues  
14 derived from:

15 (1) the proceeds of the hospitality fee of the  
16 municipality after the deduction of the administrative costs  
17 pertaining to the fee in an amount not to exceed ten percent of  
18 the gross rent fees collected by the municipality in a fiscal  
19 year and excluding from the computation of such costs the  
20 administrative costs ultimately recovered from delinquent  
21 proprietors by civil action as penalties, costs of collection  
22 and attorney fees, but not as interest on unpaid principal;

23 (2) any convention center facility, after  
24 provision is made for the payment of the operation and  
25 maintenance expenses of the convention center; and

. 142365. 1

underscored material = new  
[bracketed material] = delete

1 (3) a combination of such net revenues from  
2 both sources in Paragraphs (1) and (2) of this subsection.

3 C. The bonds shall bear interest at a rate or rates  
4 as authorized in the Public Securities Act, and the first  
5 interest payment may be for any period authorized in that act.

6 D. Except as otherwise provided in the Hospitality  
7 Fee Act, revenue bonds authorized in the Hospitality Fee Act  
8 shall be issued in accordance with the provisions of Sections  
9 3-31-2 through 3-31-6 NMSA 1978.

10 Section 12. REFUNDING BONDS. --

11 A. A municipality having issued revenue bonds  
12 pursuant to the Hospitality Fee Act may issue refunding bonds  
13 payable from pledged revenues therein authorized for the  
14 payment of revenue bonds at the time of the refunding or at the  
15 time of the issuance of the bonds being refunded as the  
16 governing body of the municipality may determine,  
17 notwithstanding that the revenue sources or the pledge of such  
18 revenues, or both, are thereby modified.

19 B. Refunding bonds may be issued for the purpose of  
20 refinancing, paying and discharging all or any part of such  
21 outstanding bonds of any one or more or all outstanding issues:

22 (1) for the acceleration, deceleration or  
23 other modification of the payment of such obligations,  
24 including without limitation any capitalization of any interest  
25 thereon in arrears or about to become due for any period not

1 exceeding one year from the date of the refunding bonds;

2 (2) for the purpose of reducing interest costs  
3 or effecting other economies;

4 (3) for the purpose of modifying or  
5 eliminating restrictive contractual limitations pertaining to  
6 the issuance of additional bonds, otherwise concerning the  
7 outstanding bonds, or to any facilities relating thereto; or

8 (4) for any combination of the foregoing  
9 purposes.

10 C. The interest on any bond refunded shall not be  
11 increased to a rate in excess of the rate authorized in the  
12 Public Securities Act and shall be paid as authorized in that  
13 act.

14 D. Except as otherwise provided in the Hospitality  
15 Fee Act, refunding bonds authorized in the Hospitality Fee Act  
16 shall be issued in accordance with the provisions of Sections  
17 3-31-10 and 3-31-11 NMSA 1978.

18 Section 13. DELAYED REPEAL. --The Hospitality Fee Act is  
19 repealed effective July 1, 2013.